

To: Environmental Protection Agency
Attn: FOIA Officer
From: Jonathan Oppenheimer, Idaho Conservation League
Re: EPA Fee Waiver Justification
Date: August 3, 2022

In support of our Freedom of Information Act (FOIA) request to the Environmental Protection Agency, we are hereby stipulating how our FOIA request meets the criteria for a fee-waiver. We are quite aware that the expenditure of taxpayer dollars is a privilege that should not be abused, and have exhibited restraint in this and other FOIA requests, so as not to overburden EPA staff, or the American taxpayer.

Since 1973, the Idaho Conservation League (ICL) has provided a unified voice for people who want to protect this state's cherished heritage of water, wildlands and wildlife. The Idaho Conservation League works through citizen action, public education and professional advocacy to bring balance to natural resource decision-making, a critical role in a state with more than 2,000 lakes, 93,000 miles of rivers and streams and a total of over 880 square miles of surface area covered by water.

The ICL is recognized as the leading conservation group based in Idaho. Our longevity is due to the fact that the ICL accomplishes things. Our success is visible in Idaho's clear, clean, cold water, amazing wildlands and abundant wildlife.

The ICL is a non-profit membership organization with over 35,000 members and supporters across the state. We have offices in Boise, Ketchum, McCall and Sandpoint. We currently have a staff of approximately 30 staff who are dedicated to the mission of the ICL, and to the conservation of the resources of the great state of Idaho. The ICL operates through the support of voluntary contributions.

Mission Statement: The Idaho Conservation League works to protect the water you drink, the air you breathe and the lands and wildlife you love.

Membership in the ICL is open to individuals from around the world.

The ICL works on a broad range of initiatives including conservation of special places in Idaho, like the Snake River Plain, Southern Selkirk Mountains of North

Idaho, the Clearwater Wildlands, the Owyhees, the Boulder-White Cloud and Pioneer Mountains of Central Idaho, the Boise Foothills, the Lewis & Clark Trail, and millions of acres of roadless wildlands that remain intact, providing refugia to countless threatened, endangered and sensitive wildlife species that make Idaho the treasure that it is.

The ICL also is committed to keeping Idahoans informed about and engaged in natural resource decisions that are made at the State, Regional, and Local levels by government representatives who are entrusted with the care of our public lands and resources. Through a Community Based Conservation program, the ICL works with local groups to engage them in the process of positive social and environmental change in Idaho. The ICL helps to engage local communities in cooperative ventures to secure land protection and sustainable benefits for communities. The ICL works to maintain clean air and clean water, so that Idaho remains a healthy and viable place to live for generations of future Idahoans.

The ICL is engaged in numerous local activities that support the national, regional, and statewide work that we do. Staff members of ICL currently serve, or have served on several BLM and USFS Resource Advisory Committees, the Stakeholder Team for the Western Governors' Association's 10-Year Wildfire Strategy and Implementation Plan, the Potlatch Corporation's Community Advisory Council for North Idaho Timberland Management, the Inland Northwest Regional Monitoring and Evaluation Team for the "Stewardship End Result Contracting Demonstration Project", as well as local Stewardship End Result Contracting Local Monitoring Teams.

Staff are also deeply engaged in community based collaborative efforts around the state including the Kootenai Valley Resource Initiative, the Clearwater Basin Collaborative, the Owyhee Initiative, the Lemhi County Forest Restoration Working Group, the Boise and Payette Forest Coalitions and others.

The ICL is dedicated to the permanent protection of identified priority areas and works closely with esteemed scientists to identify conservation opportunities and regional "hot-spots" and corridors of biodiversity and biological importance. The ICL also works to protect the ecological and wilderness characteristics of Idaho's wildlands. The ICL strives to maintain and restore biological diversity and viable populations of native species of flora and fauna.

Following is a simple, clear and concise rationale for the justification of expenditure of public funds as it relates to the aforementioned FOIA request:

Factor 1: Do the requested records concern “the operations or activities of the government?”

Response: The requested records pertain to the operations of the EPA, an agency of the federal government that is entrusted with the protection of surface water, air, and other resources. In particular, the requested materials pertain to EPA permitting associated with Sec. 402 of the Clean Water Act under the National Pollutant Discharge Elimination System permitting process, and the procedures relevant to enforcement of violations of the Clean Water Act.

Factor 2: What is the informative value of the information to be disclosed? Explain in detail why the information requested is “likely to contribute” to the understanding of government operations or activities.

Response: The information provided will provide the public with a clearer understanding of how enforcement actions are processed and concluded for suction dredge mining operations. This is particularly important due to the impacts associated with habitats that have been designated or which harbor species listed under the Endangered Species Act, in areas that are 303(d) listed and other sensitive waters. Further, an understanding of the consequences associated with unpermitted discharges discourages future violators from discharging without a permit. No public information on the status of these penalties is available.

The information provided will be condensed into an easy to understand format, may be provided on the ICL website at www.idahoconservation.org, and will also be provided to ICL members, representatives of the media, decision-makers, and other interested individuals. ICL is arguably the “go to” group for individuals who are interested in learning more about permitting activities associated with suction dredge mining in Idaho.

ICL has posted numerous blog entries, media press clips, and supporting information on the topic of recreational suction dredge mining in Idaho. Here are some samples:

Blog

<https://www.idahoconservation.org/blog/unpermitted-dredge-miners-face-increasing-penalties/>

<https://www.idahoconservation.org/blog/court-rules-suction-dredge-miner-polluted-idaho-river/>

<https://www.idahoconservation.org/blog/dredge-miners-seek-radical-expansion/>

<https://www.idahoconservation.org/blog/california-dredge-miner-due-in-federal-court/>

Newsletter

http://issuu.com/idahoconservation/docs/idcons2013_07/7

Radio story

<http://www.publicnewsservice.org/2012-10-17/water/salmon-river-gold-mining-dredges-up-a-lawsuit/a28903-1>

Information obtained will be shared through the release of press releases, reports, press conferences, public meetings, meetings with EPA staff at various levels of administration, and other agencies (Idaho Department of Environmental Quality, USDA Forest Service, Fish and Wildlife Service, NOAA-Fisheries, Idaho Department of Water Resources, and others), communications with Native American Tribes, meetings and personal communications with reporters, and other interested members of the public. Depending on the findings of the analysis, the ICL will use the information to brief the EPA at the State, Region and National levels, as appropriate.

Factor 3: Please identify why disclosure of the documents would contribute to the understanding of the subject by the public, as opposed to an individual's understanding of the requester or by a narrow segment of interested persons.

Response: The information provided will provide the public with a clearer understanding of the follow up associated with EPA enforcement activities in the state of Idaho. Consolidated and easy-to-read information is generally not provided by the EPA that serves to educate the public on the status of enforcement activities of the agency.

Currently, members of the public at large, have little understanding of the enforcement

The information provided will be condensed into an easy to understand format, will be provided on the ICL website at www.idahoconservation.org and will

also be provided to ICL members, representatives of the media, decision-makers, and other interested individuals. As mentioned previously, the results of our analysis will be used to brief members of the EPA and other agencies at various levels of administration. Information extracted and consolidated will also be included in organizational newsletters, annual reports, email updates, and other communications.

The ICL regularly submits news releases to members of the press. The ICL releases annual reports on an annual basis. The ICL sends out *The Idaho Conservationist*, our newsletter, on a quarterly basis to members. In addition copies of our newsletter are available at our various field offices, as well as through other outlets. ICL maintains active Facebook and Twitter accounts and this information will be shared via these social media outlets. ICL's Facebook page currently has over 15,000+ followers, along with channels on Instagram and other social media platforms. Additionally information is regularly distributed to members and supporters via email alerts.

Our organizational ability to extract, synthesize, and effectively convey the requested information to the public at large has been demonstrated through previous accomplishments.

Jonathan D. Oppenheimer, the Senior Conservation Associate, holds a degree in Resource Conservation from the University of Montana, School of Forestry. In addition, having worked in the natural-resource policy arena for nearly two decades with national, regional and local groups, he has the aptitude and skills necessary to filter through and digest the information provided. Further, he has developed skills that have increased his capacity to assess the to-be-disclosed information through the preparation of previous reports that relied in full, or in part on documents released under the FOIA, including, but not limited to, *From the Ashes: Reducing the Harmful Effects and Rising Costs of Western Wildfires* (Taxpayers for Common Sense, 2000), *Lost in the Forest: How the Forest Service's Misdirection, Mismanagement and Mischief Squanders Your Tax Dollars* (Taxpayers for Common Sense, 2002), *Fire in Idaho: An Analysis of Federal Fire Policy* (ICL, 2003), *Fire in Idaho: Lessons for Human Safety and Forest Health – A Review of Idaho's 2007 Fire Season* (ICL, 2007), and *Fire in Idaho: Lessons for Community Safety and Forest Restoration – An Analysis of Idaho's 2012 Fire Season* (ICL, 2012) . Further, he has participated as a stakeholder in the Congressionally-mandated (Public Law 106-291) preparation of the Western Governors' Association's 10-Year Comprehensive Wildfire Strategy and *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy*

Implementation Plan (USDA Forest Service and Department of the Interior, May 2002).

2007 Report:

http://gacc.nifc.gov/nrcc/dc/idgvc/dispatchforms/FireinIdaho2008_09.pdf

2012 Report:

<http://www.idahoconservation.org/files/fire-in-idaho-2012-report>

2012 Blog:

<http://www.idahoconservation.org/blog/2013-blog-archive/restoring-fire-ca-n-benefit-idaho-forests>

Other staff members whose expertise and abilities will likely be utilized through this analysis include, but are not limited to Marie Kellner, Conservation Program Director; Justin Hayes, Executive Director; John Robison, Public Lands Director, Brad Smith, North Idaho Director; and Rick Johnson, Executive Director. Additional resumes, references or information about their work experience is available upon request.

The ICL has demonstrated the ability to educate the public through the use of information requested under the FOIA. Specifically, the ICL filed a series of FOIA requests related to roadless area timber sales and released reports in 1994, 1997, and 1999 that documented plans to log in roadless areas. As a result of research and release of documents and reports, the ICL garnered significant attention in regional and local news outlets, including, but not limited to, the *Boise Idaho Statesman*, *Spokane Spokesman-Review*, *Boise Weekly*, *KTVB News*, *KBOI News* and *Radio, High Country News* and others.

Factor 4: *How will the disclosure of the documents contribute “significantly” to public understanding? For example, will disclosure contribute to public understanding of government operations or activities? The public benefit should be “identified with reasonable specificity.” To warrant a waiver, the public’s understanding of the subject matter must increase as compared to the level of public understanding existing prior to the release of the documents.*

Response: The information provided will provide the public with a significantly clearer understanding of the enforcement process in the state of Idaho related to suction dredge mining in Idaho’s streams and rivers. This information is not provided by the EPA that serves to educate the public on the current status of enforcement actions associated with suction dredge mining activities.

As we noted previously, the information provided will be condensed into an easy to understand format, will be provided via the ICL website at www.idahoconservation.org and will also be provided to ICL members, representatives of the media, decision-makers, and other interested individuals. Information extracted and consolidated is also likely to be included, and/or referenced in organizational newsletters, annual reports, email updates, and brochures. As a result of the research, analysis and consolidation of information, the American public and Idahoans will have a “significantly” clearer understanding of the role of the EPA in their efforts to promote protection of water quality consistent with the Clean Water Act in Idaho.

This will significantly benefit the public, because it will serve to educate Idahoans and members of the American public about the enforcement process utilized by EPA associated with suction dredge mining.

ICL will use the requested information to prepare briefing materials, reports, white papers, press releases, presentations and/or other educational materials to educate the American public on the scope of permitting activities and suction dredge mining occurring in Idaho. Materials will be widely distributed through a variety of methods including, but not limited to, email lists, the ICL web site, blog, and direct communication.

The ICL has demonstrated the ability to educate the public through the use of information requested under the FOIA. As a specific example, the ICL filed a series of FOIA requests related to roadless area timber sales and released reports in 1994, 1997, and 1999 that documented plans to log in roadless areas. As a result of research and release of documents and reports, the ICL garnered significant attention in regional and local news outlets, including, but not limited to, the *Boise Idaho Statesman*, *Spokane Spokesman-Review*, and numerous other traditional and “new” media outlets.

Factor 5: Does the requester have a commercial interest that would be furthered by the requested document, and what is the magnitude of that interest?

Response: The ICL is recognized by the Internal Revenue Service as a 501(c)(3) organization that is dedicated to the conservation of natural resources in Idaho and to the education of the public on natural resource issues. The ICL has no commercial interest with regard to the release of these documents and does not seek to profit from any of the materials requested. In the development of each of

the prior reports and the dissemination of information provided to ICL via the FOIA, ICL released the reports and/or information on the web, and through other means (i.e. USPS distribution) and did not receive any compensation whatsoever in the distribution or production of said findings or analyses.

Factor 6: *What is the requester's primary interest in disclosure? Is the magnitude of the identified commercial interest of the requester sufficiently large when compared with the public interest in disclosure? Is disclosure "primarily in the commercial interest of the requester"?*

Response: The Internal Revenue Service recognizes The ICL as a 501(c)(3) organization that is dedicated to the education of the public on natural resource issues. ICL has no commercial interest with regard to the release of these documents and does not seek to profit from any of the materials requested.

As such the ratio of benefit to the public at large is "sufficiently large" when compared with the commercial interest of the ICL. Information will be used to educate the public to a significantly higher degree than any current, or proposed, reporting on enforcement actions associated with suction dredge mining in Idaho.

The primary interest of the ICL with regards to this request is to increase the public's understanding of the enforcement and penalty process related to suction dredge mining in Idaho's rivers and streams. In doing so, we will increase our own organizational understanding of the enforcement process and we will inform the public, our members, decision makers, land managers and others with our findings.

If you have any further questions, need any further justification for our request, or if you need any clarification whatsoever, please do not hesitate to contact me.

Sincerely,



Jonathan Oppenheimer
External Relations Director